

Message Text

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ACTION L-03

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R 201638Z JAN 78
FM AMEMBASSY THE HAGUE
TO SECSTATE WASHDC 1916

UNCLAS THE HAGUE 0332

E.O. 11652: N/A
TAGS: ACLM, NL
SUBJ: POOR MAIL SYSTEM MAKES FOR BAD LAW: SUIT AGAINST U.S.

1. ON OCTOBER 20, 1977, A NOTICE REQUIRING MR. JOSEPH CHRISTIANO, CONSUL GENERAL OF THE AMERICAN CONSULATE GENERAL IN ROTTERDAM TO APPEAR IN THE ROTTERDAM DISTRICT COURT IN CONNECTION WITH A SUIT BROUGHT BY PIETER VAN HECKE, FORMER EMPLOYEE OF THE CONSULATE, WAS GIVEN TO THE CONSULATE GENERAL IN ROTTERDAM. THIS NOTICE WAS SENT BY MR. CHRISTIANO TO THE ADMINISTRATIVE OFFICER OF THE EMBASSY WHO FORWARDED THE NOTICE TO MR. WEFERS BETTINK OF THE PROTOCOL SECTION OF THE MINISTRY OF FOREIGN AFFAIRS UNDER COVER OF A LETTER DATED OCTOBER 28, 1977. THE ADMINISTRATIVE OFFICER PREVIOUSLY TELEPHONED MR. WEFERS BETTINK AND WAS ASSURED THAT THE OFFICE OF PROTOCOL WOULD NOTIFY THE ROTTERDAM DISTRICT COURT THAT MR. JOSEPH CHRISTIANO AS A CONSUL GENERAL WAS NOT SUBJECT TO THE JURISDICTION OF THE COURT.

2. ON JANUARY 10, 1978, A ROTTERDAM DISTRICT COURT ORDER GRANTING VAN HECKE 5324.40 GUILDERS, PLUS COSTS FOR SEVERANCE PAY, WAS DELIVERED TO THE CONSULATE.

3. THE ADMINISTRATIVE OFFICER VISITED WEFERS BETTINK ON JANUARY 20, 1978,

WHO AT THAT TIME MADE THE FOLLOWING POINTS:

(A) SINCE THE CASE WAS AGAINST THE STATE OF UNITED STATES OF
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AMERICA IT WAS VALID. THE STATE ITSELF IS NOT
IMMUNE FROM JURISDICTION AND IS SUBJECT TO SUIT.

(B) MR. CHRISTIANO, BY ACCEPTING THE NOTICE OF SUMMONS FROM
THE DISTRICT COURT, ACCEPTED RESPONSIBILITY FOR THE STATE OF
THE UNITED STATES AND JURISDICTION OF THE DISTRICT COURT.

(C) MR. BETTINK STATED THAT HE NEVER RECEIVED THE LETTER WHICH
WAS SENT TO THE FOREIGN MINISTRY BY HAND ON OCTOBER 28, 1977,

CONTAINING THE ORIGINAL SUMMONS GIVEN TO MR. CHRISTIANO AND THE REQUEST THAT IT BE RETURNED TO THE PROPER AUTHORITIES. HAD HE RECEIVED THE NOTICE AND RETURNED IT TO THE COURT, HE ASSERTED, NO CASE WOULD HAVE BEEN BROUGHT UP. HOWEVER, IN THE ABSENCE OF THIS ACTION, HE ARGUED THAT THE COURT ORDER IS A VALID ENFORCEABLE DOCUMENT AND THE STATE OF THE UNITED STATES OF AMERICA IS LEGALLY OBLIGATED TO PAY THE SUM OF GLDS. 5324.40 TO MR. VAN HECKE. HE SUGGESTED THAT THE U.S. GOVERNMENT INSTRUCT ALL ITS EMPLOYEES NOT TO ACCEPT ANY COURT DOCUMENTS IN THE FUTURE SINCE ACCEPTANCE WAS EVIDENCE OF THE WAIVER OF IMMUNITY.

4. WEFERS BETTINK FELT THAT THE USG HAD THE FOLLOWING OPTIONS IN THIS CASE:

- (1) TO PAY MR. VAN HECKE.
 - (2) HIRE A LAWYER AND APPEAL THE CASE TO A HIGHER COURT.
 - (3) IN RESPONSE TO AN OBSERVATION THAT THERE WERE OTHER OPTIONS, I.E. TO DO NOTHING OR FOR THE MFA NOW TO NOTIFY THE COURT OF LACK OF JURISDICTION, HE STATED THAT THE MFA COULD NOT INTERVENE AFTER A COURT DECISION HAD BEEN MADE. HE ADDED HE HAD CHECKED WITH HIS LEGAL DEPARTMENT AND THAT HE HAD RECEIVED THE OPINION THAT EVEN THOUGH THE JUDGMENT IS LEGALLY ENFORCEABLE, ITS EXECUTION WOULD BE DIFFICULT.
- MR. VAN HECKE'S LAWYER WOULD HAVE TO FIND NON-IMMUNE U.S. - OWNED PROPERTY IN ROTTERDAM DISTRICT TO SEIZE FOR PAYMENT.

5. THE EMBASSY INTENDS TO PURSUE CASE AT A HIGHER LEVEL
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IN MFA SINCE WE CONSIDER RESPONSE REPORTED ABOVE IS UNSATISFACTORY AND NOT CONSISTENT WITH INTERNATIONAL LAW AND CUSTOMARY DIPLOMATIC PRACTICE.

6. THE DEPARTMENT'S COMMENTS AND GUIDANCE WOULD BE APPRECIATED.
MCCLOSKEY

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Message Attributes

Automatic Decaptioning: X
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Draft Date: 20 jan 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
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Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
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Drafter: n/a
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Status: NATIVE
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TAGS: ACLM, NL
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